IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4292 OF 2004

WITH

CIVIL APPLICATION NO. 5249 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PUNJABHAI I.PATEL AND LAXMIBENWD/O.PUNJABHAI I PATEL

Versus

SUSHIL CORPORATION - THROUGH PROPRIETOR HIRABEN MUJIBHAI

Appearance:

1. Special Civil Application No. 4292 of 2004

MR AJ PATEL

WITH

MR SHEETAL R PATEL for Petitioner No. 1-1/4

RULE SERVED for Respondent No. 1

MR NANDLAL THAKKAR for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision:26/11/2004

C.A.V. JUDGEMENT

1. This petition is preferred under Article 227 of the Constitution of India challenging the execution proceedings preferred by the judgment creditor in Execution Petition No. 120 of 2002 as per the judgment and decree dated 18-6-1993_ passed by the 3rd Jt. Civil Judge (SD), Ahmedabad (Rural) in Special Civil Suit No. 25 of 1984, which reads as under :

"The suit of the plaintiff is decreed with costs, and the defendants are hereby directed to give their signatures where necessary as per the conditions of the agreement to sell in respect of the suit property within a period of one month from the date of the order and to extend support and cooperate; and on receipt of all necessary permissions to execute the document in respect of the suit property. Moreover, if the defendants fail to do so, it is ordered that the plaintiff will be at liberty to take necessary legal action. Accordingly order of the Court Commissioner and to obtain legal permissions and to get the document executed.

Further, the plaintiffs are directed to pay to the defendants balance amount of consideration of the value mentioned in the agreement to sell in respect of the suit land within one month from the date of the order, and if the defendants refuse to accept the said amount, the said amount is ordered to be deposited in the Court."

2. Learned advocate for the both the parties made submissions before me while arguing Special Civil Application No. 1724 of 2004 which I have decided and have dismissed the said petition filed by the present petitioner against the order passed by the trial Court below the application Exh.110 for extension of time. Therefore, I do not see any necessity to go into the details of the petition as per the settled principle of law. No petition can be entertained against the execution proceedings filed by the judgment debtor if it is otherwise in accordance with law.

3. I have passed the detailed and speaking order in Special Civil Application No. 1724 of 2004 on the merits of the case after hearing the learned advocates for the parties. On the strength of the order, the judgment

creditor has also acted upon that order. Therefore, the present petition under Article 227 of the Constitution of India cannot be entertained by this Court in view of the judgment of the Hon'ble Apex Court reported in 1971 SC 55, more particularly following paragraph does not allow this Court to interfere with the execution proceedings:

> "Civil Procedure Code (V of 1908) O.21 R.2 the Executing Court cannot go beyond the decree until set aside by the proper proceedings. When the objection to the jurisdiction does not appear on the face of the record and requires execution, the Executing Court has no jurisdiction to entertain objections in execution proceedings "the Court executing the decree cannot go beyond the decree between the parties or their representatives. It must take the decree according to its tenor and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceedings in the appeal or revision. A decree even if it be erroneous is still binding between the parties (para 6)"

4. Final Judgment and decree is passed in Special Civil Suit No. 25 of 1984 by the 3rd Jt. Civil Judge (SD), Ahmedabad (Rural) and duty is cast upon the judgment debtor to give their signature whenever necessary to the plaintiff for obtaining permission as per the conditions of the agreement to sell in respect of the property in question within a period of one month from the date of the order and to extend support and cooperation and on receipt of all necessary permissions to execute the document in respect of the suit property. Looking to the facts and circumstances of the case and the material on record the judgment debtor- petitioners have failed to do so. Thus, the Executing Court has rightly appointed the Court Commissioner as per the decree of the trial Court. Hence, no interference is called for by this Court under Article 227 of the Constitution of India in execution proceedings initiated before the Executing Court. As per the settled principle of law, the judgment creditor who was to deposit the money as per the order of the Court after obtaining extension of time. The said order of extension of time is confirmed by this Court in Special Civil Application No. 1724 of 2004. Therefore, the present petition cannot be entertained and hence this petition fails and is dismissed and the execution proceedings pending before the Executing Court are required to be proceeded further in accordance with law.

5. In view of the above discussion, this petition is not entertained by this Court and accordingly the same is dismissed. Rule is discharged, with no order as to costs. Ad-interim relief granted by this Court stands vacated.

6. In view of the aforesaid order passed in the main petition, no further order is required to be passed in Civil Application No. 5249 of 2004. Accordingly, the said civil applications stands disposed of.

(D.N. Patel, J.)

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After pronouncement of the aforesaid judgment, learned advocate for the petitioner requested this Court to stay implementation, execution and operation of the order for 8 weeks as the petitioner wants to approach the higher forum against the aforesaid judgment. Looking to the facts and circumstances of the case, the request made by the learned advocate for the petitioner for stay of the above order is rejected.

Date:-26-11-2004. (D.N. Patel, J.)
/JVSatwara/